

NTSB Order No. EA-4125

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17th day of March, 1994

Respondent .

Docket SE-12151

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on August 4, 1992, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator suspending respondent's airline transport pilot certificate for 30 days for violating 14

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C.F.R. 91.9.<sup>2</sup> We deny the appeal.

Respondent was the pilot in command of a Beechcraft E18S on May 25, 1990. After landing at Anderson, SC shortly before 3:00 A.M.,<sup>3</sup> he taxied to the White's Aviation ramp. Pursuant to an agreement with White's, respondent typically parked the Beechcraft on this ramp, backing up onto the grass either facing the ramp or facing the perpendicular taxiway.<sup>4</sup> On the night in question, there was no room on the ramp for respondent's aircraft. According to respondent, there were two vehicles -- a fuel truck and an aircraft -- parked in the area he usually used, a dirt and scrub grass area next to the intersection of the ramp and the taxiway. Tr. at 112-113 and Exhibit A-1. Respondent turned off the taxiway onto the dirt and grass before he reached the ramp, apparently intending to park the aircraft on another section of the verge.<sup>5</sup> Shortly after turning off the taxiway onto the dirt, the right landing gear of the Beechcraft hit and knocked off a 4' x 4', 8" thick concrete slab that was positioned

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<sup>2</sup>§ 91.9 (now 91.13(a)) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>Tr. at 42.

<sup>4</sup>Respondent backed the aircraft onto the grass verge so as to avoid dripping oil onto the ramp itself. Tr. at 70.

<sup>5</sup>Respondent attacks the Administrator's characterization of the grass in the area as "high." This term is not used in the complaint, and it appears from the videotape Exhibit A-2 that much of the vegetation consisted of low weeds, although there were some higher (perhaps 1 foot) weeds in the immediate area. Respondent offers no explanation for his concern, and the difference is immaterial to our disposition.

approximately 6-8 inches above the ground covering a drainage culvert. The landing gear then fell into the culvert with the right engine cowl and nacelle resting on the concrete slab.<sup>6</sup> The right propeller and wing tip were damaged. Tr. at 8, 17. A piece of the right propeller was found approximately 75 feet from the aircraft. Tr. at 18, 129. In affirming the Administrator's order, the law judge found that, given the late hour, the lack of airport lights (there being only reflectors in the area), and the unfamiliar terrain, respondent did not exercise the required degree of care and good judgment in taxiing into the area.

On appeal, respondent challenges the conclusion that his actions were careless, posing the issue as, if he is found careless, then every aircraft "incident" results in a finding of carelessness.<sup>7</sup> We disagree with this suggestion. Having found respondent careless in this set of circumstances does not compel the conclusion respondent suggests.

Respondent taxied into a large, raised concrete slab. It is no answer for him to say that he was familiar with the area; he admitted that he did not know the concrete slab was there. Operating the aircraft off the pavement without ensuring the absence of obstacles was careless conduct. Nor is the slab's lack of marking an exonerating factor. Although some of the

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<sup>6</sup>With the right gear in the culvert, the tail of the aircraft measured 21 feet from the edge of the taxiway. Tr. at 137.

<sup>7</sup>Respondent combines carelessness and recklessness, see Appeal at 1. They are separate charges, respondent here having been found careless, not reckless.

grassy area immediately next to the ramp was routinely used for aircraft parking, the more distant area into which respondent taxied had not been used for that purpose in some years and, then, only during airport construction. Tr. at 75, 136. Thus, the existence of an old tie-down near the culvert does not assist respondent's defense.

Moreover, we see no merit in respondent's argument that, because the event was characterized by the FAA as an "incident," rather than an "accident," and involved only minor damage, a carelessness finding is inappropriate. Even assuming the damage was minor,<sup>8</sup> the law judge properly found this issue irrelevant. See, e.g., Roach v. National Transp. Safety Bd., 804 F.2d 1147, 1157 (10th Cir. 1986), cert. den'd, 486 U.S. 1006 (1988) and Haines v. Department of Transportation, 449 F.2d 1073 (D.C. Cir. 1971) (even a potential endangerment to life or property is enough to establish a violation of § 91.9). Similarly irrelevant to our assessment of respondent's conduct is the FAA's characterization, for reporting purposes, of this event.<sup>9</sup>

Finally, respondent suggests that he had no alternative to his actions. The alternatives posed, however, are not complete. For example, respondent does not establish that he had no

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<sup>8</sup>Although one FAA notice (Exhibit R-2) terms the damage minor, another (Exhibit A-3) terms it substantial.

<sup>9</sup>Respondent also erects a strawman in his discussion of "sudden stoppage" (Appeal at 4). The Administrator's complaint alleged no such fact, nor is it necessary to a finding of carelessness that the propeller stopped as described in Exhibit R-1.

parking alternative to the White's ramp. More importantly, he does not explain why, as a reasonably prudent pilot, he should not be expected to ensure the absence of obstacles (through, for example, stopping the aircraft and thoroughly reconnoitering the area) before taxiing off the pavement. Having heard all the evidence presented, the law judge concluded that respondent's assumption that he was adequately familiar with the area was a careless one. Respondent has not provided the Board with a basis for questioning this judgment.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.<sup>10</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

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<sup>10</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).